Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition of LCI and CompTel for	)	
Expedited Rulemaking To Establish	)	RM 9101
Reporting Requirements and	)	
Performance and Technical Standards	)	
for Operations Support Systems	)	

AMERITECH'S REPLY COMMENTS

The Ameritech Operating Companies[1] ("Ameritech"), in accordance with the Public Notice released in this docket on June 10, 1997, respectfully offer the following brief reply to the Initial Comments on the Petition for Expedited Rulemaking ("Petition") filed on May 30, 1997 by LCI International Telecom Corp. ("LCI") and the Competitive Telecommunications Association ("CompTel")(collectively referred to as the "Petitioners").

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[1] The Ameritech Operating Companies are: Illinois Bell Telephone Company ("Ameritech Illinois"), Indiana Bell Telephone Company, Incorporated ("Ameritech Indiana"), Michigan Bell Telephone Company ("Ameritech Michigan"), The Ohio Bell Telephone Company ("Ameritech Ohio"), and Wisconsin Bell, Inc. ("Ameritech Wisconsin").

The parties filing comments in support of the Petition and the establishment of federal standards for operations support system ("OSS") performance argue that such standards are necessary to ensure that incumbent local exchange carriers ("ILECs") provide nondiscriminatory access to their OSS functions in accordance with 47 U.S.C. Section 251(c)(3). That is not true. As Ameritech explained in its Initial Comments, Ameritech currently provides nondiscriminatory access to its OSS functions in accordance with the terms of interconnection agreements which were found to be consistent with federal and state law and in the public interest by state regulatory commissions that approved the agreements. Moreover, pursuant to the terms of those interconnection agreements and other public commitments, Ameritech measures and reports on a monthly basis the performance of all of its OSS interfaces in terms of cycle time, reliability (accuracy) and availability. This is reason enough for the Commission to continue to rely on the parties and, if necessary, the state regulatory commissions, to establish OSS performance measurements and reporting requirements through the process Congress created in Section 252 of the 1996 Act.

But there is another, more fundamental, reason why the Commission should reject the Petition in this docket. State commissions conducting Section 252 arbitrations already have considered and rejected many of the OSS performance measurements and reporting requirements which are proposed in the Petition, including the Local Competition Users Group ("LCUG") proposal attached to the Petition.[2] Parties to those interconnection agreements who are dissatisfied with the outcome of the arbitrations and wish to seek review must do so in federal district court pursuant to Section 252(e)(6). However, if the Commission initiates the rulemaking proceeding requested in the Petition, parties will be able to use the rulemaking, as a practical matter, to collaterally attack the OSS-related provisions in their Section 252 interconnection agreements with which they are not satisfied. That would be contrary to the recent opinion of the United States Court of Appeals for the Eighth Circuit in *Iowa v. F.C.C*, wherein the Court stated:

> [S]ubsection 252(e)(6) directly provides for federal district court review of state commission determinations when parties wish to challenge such determinations. 47 U.S.C.A. 252(e)(6). The FCC responds by arguing that federal district court review

[2] For example, as Ameritech stated in its Initial Comments, the LCUG proposal that Petitioners recommend in this docket was modeled after AT&T's and MCI's proposal, which the Illinois Commerce Commission rejected in both the AT&T/Ameritech and MCI/Ameritech arbitrations, and the Illinois Hearing Examiner rejected in the Illinois Commerce Commission's investigation of Ameritech's Section 271 compliance. Illinois HEPO, June 20, 1997 at 99, par. A, Commission Conclusion ("These issues have already been addressed in negotiations between the parties and in the AT&T and MCI arbitrations. Moreover, even assuming AT&T's proposals were properly raised in this proceeding, we find that they lack merit and should be rejected.").

> under subsection 252(e)(6) is not the exclusive remedy for a party aggrieved by state commission decisions under the Act and that such a party has the option of also filing a Section 208 complaint with the FCC. Although the terms of subsection 252(e)(6) do not explicitly state that federal district court review is a party's 'exclusive' remedy, courts traditionally presume that such special statutory review procedures are intended to be the exclusive means of review . . . . We afford subsection 252(e)(6) our traditional presumption and conclude that it is the exclusive means to attain review of state commission determinations under the Act.[3]

It is true that the Court's decision in this regard was made in the context of the Commission's complaint jurisdiction under Section 208. And it also is true that the Commission generally is authorized to promulgate rules under the 1996 Act. However, just as the Commission cannot review and overrule a state commission's determination in an interconnection arbitration on the basis of a Section 208 complaint, the Commission cannot effectively review and overrule a state commission's determination in an interconnection arbitration simply by promulgating a contrary rule.[4]

Doing so in the context of OSS performance measurements and reporting obligations would be especially unreasonable where, as here,

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[3] *Iowa Utilities Board v. F.C.C, No. 96-3321 consol.*, 1997 U.S. App. LEXIS 18183, at *47-48 (citations omitted).

[4] *See Iowa Utilities Board v. F.C.C, No. 96-3321 consol.*, 1997 U.S. App. LEXIS 18183, at *54 (FCC has no jurisdiction under its general rulemaking authority to adopt 47 C.F.R. Section 51.303 and thereby require that pre-existing interconnection agreements that were negotiated before the enactment of the 1996 Act must be submitted for state commission approval).

parties are seeking to obtain access to OSS functions that goes well beyond the parity requirements of Section 251(c)(3). MCI, for example, contends in no uncertain terms that "ILECs should be required to meet minimum levels of service to CLECs regardless of parity."[5] Again, the Eighth Circuit's recent decision is instructive:

> Plainly, the Act does not require incumbent LECs to provide its competitors with superior quality interconnection. Likewise, subsection 251(c)(3) does not mandate that requesting carriers receive superior quality access to network elements upon demand.
>
> . . .
>
> The fact interconnection and unbundled access must be provided on rates, terms, and conditions that are nondiscriminatory merely prevents an incumbent LEC from arbitrarily treating some of its competing carriers differently than others; it does not mandate that incumbent LECs cater to every desire of every requesting carrier.[6]

Therefore, the Commission should not allow its rulemaking authority to be evoked for purposes of establishing OSS-related performance measurements and reporting obligations that conflict not only with prior state arbitration decisions, but with the plain language of the 1996 Act.

For these reasons, and for the reasons stated in Ameritech's Initial Comments, the Commission should not initiate the rulemaking Petitioners' request.

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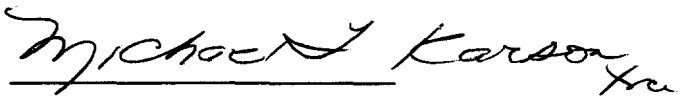
[5] MCI Comments at 9 (bold font deleted).

[6] *Iowa Utilities Board v. F.C.C, No. 96-3321 consol.*, 1997 U.S. App. LEXIS 18183, at *78-79.

Respectfully submitted,



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Dated: July 30, 1997

CERTIFICATE OF SERVICE

I, Edith Smith, do hereby certify that a copy of Ameritech's Reply Comments in Docket RM 9101 has been served on the parties on the attached service list, via first class mail, postage prepaid, on this 30th day of July, 1997.

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